

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2699 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DIWAKAR A BHATT

Versus

BHAVNAGAR UNIVERSITY

Appearance:

MR S.P.Majgaonkar for Petitioner
MR SN SHELAT for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 23/06/2000

ORAL JUDGEMENT

The petitioner is aggrieved by the impugned order dated 3.11.1998 (Annexure Q) where by communication of the Registrar, Bhavnagar University he has been reverted during the extended probationary period from the post of Deputy Registrar to the post of Section Officer.

2. The brief service record of the petitioner is as under:-

He entered the service of the University on 1.5.62 as Laboratory Assistant. He was promoted to the post of Section Officer on 1.7.79. Pursuant to an advertisement issued by the University he applied for the post of Deputy Registrar and by order dated 1.5.87 was selected and appointed to that post initially on a probationary period of one year.

3. The said probation period was extended by six months and was due to expire on 4.11.1988 but just a day before the expiry of the extended probationary period, by impugned order dated 3.11.1988 he was reverted to his original post of Section Officer. Learned Counsel appearing for the petitioner drew attention of this Court to the various communications issued to the petitioner by the University through the Registrar and the Vice Chancellor.

4. It is pointed out that there are allegations against him of issuing duplicate marksheets contrary to the laid down official procedure. There are also adverse remarks passed against him in the confidential records such as, 'he lacks knowledge of office procedure, has no control over the subordinate staff and his performance is poor'. Learned Counsel submits that although the impugned order of his reversion appears to be innocuous and made in the extended probationary period but if the background of the impugned order is seen, the order is punitive and amounts to imposition of punishment for the alleged misconduct committed by the petitioner. Learned Counsel relies on the decisions of the Supreme Court in AIR 1999 SC 983 in the case of Diptiprakash Menon Vs. Satyendranath Bose National Centre for Basic Science, Calcutta and 2000 AIR ACW 792 in V.P.Ahuja Vs. State of Punjab & Ors.

5. Learned Counsel also assails the impugned order of reversion on the ground of malice and alleged personal illwill of the Vice Chancellor. Attention of the Court is invited to the averments in the petition contained in para 16 of the petition.

6. I have also heard Learned Counsel appearing for the University who, in reply stated, that the petitioner's performance during his initial and extended period of probation was not to the entire satisfaction of the authorities of the University and therefore by an

innocuous order he has been reverted and sent back to his original post of Section Officer. Learned Counsel for the University contends that such order cannot be termed as punitive or stigmatic.

7. I have considered the submissions made by Learned Counsel for the parties as also looked into the decisions of the Supreme Court (Supra) cited before me.

8. The law concerning termination of a probationer simplicitor and/or on basis of charges has been now settled by the latest decisions of the Supreme Court in the case of Dipti Banerjee (Supra) in which all previous decisions of the Supreme Court have been considered. The case of D.P.Banerjee (Supra) has been relied by the Supreme Court in the case of V.P.Ahuja (Supra). It is now well settled proposition of law that if the order of termination simplicitor is founded on allegations of misconduct, the same cannot be passed without giving an opportunity of showing cause or defence to the employee. In the instant case, the impugned order of reversion is prima facie innocuous as it does not contain any allegation of misconduct not it contains stigma. The Court is entitled to go behind the order to find out the motive or foundation of the order. From the communications sent to the petitioner this Court does not find that any specific misconduct was attributed to him. During the probation period adverse remarks were recorded in his confidentials and instructions were issued to him to produce the university records. He is alleged to have committed certain irregularities in discharge of his duties. Such allegations made during the probationary period would not constitute allegation or any specific misconduct to warrant an inquiry into the same by the Authorities of the University. The record produced by the petitioner himself shows that the authorities were not satisfied with the work and conduct of the petitioner. His poor or inferior performance was the motive behind passing the impugned order of his reversion. It cannot be held that the order of reversion passed during the probationary period was either stigmatic or punitive and required holding of any departmental inquiry. This Court finds no fault in the action and this petition is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(D.M.Dharamadhikari, CJ)

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